

United States
Circuit Court of Appeals
For the Ninth Circuit ⁶⁴

HOO GAN TZE,

Appellant,

vs.

EDWARD L. HAFF, as Acting Commissioner of
Immigration of the Port of San Francisco,
California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division.

FILED

FEB - 6 1933

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit

HOO GAN TZE,

Appellant,

vs.

EDWARD L. HAFF, as Acting Commissioner of
Immigration of the Port of San Francisco,
California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

| | Page |
|---|------|
| Affidavit of Service of Petition for Appeal, etc. | 66 |
| Appearance of Respondent, etc..... | 17 |
| Assignment of Errors..... | 64 |
| Bond for Costs on Appeal..... | 67 |
| Certificate of Clerk to Transcript of Record.. | 70 |
| Citation on Appeal..... | 71 |
| Excerpts of testimony Filed by Respondent... | 17 |
| Motion to Vacate Order Staying Deportation | 61 |
| Notice of Motion to Vacate Order Staying Deportation | 60 |
| Order to Show Cause..... | 15 |
| Order Staying Deportation..... | 57 |
| Order Submitting Matter | 59 |
| Order Denying Petition for Writ..... | 59 |
| Order Vacating Order Staying Deportation... | 62 |
| Order Staying Deportation (Oct. 14, 1932).. | 62 |
| Order Staying Deportation (Nov. 4, 1932).. | 63 |
| Order Allowing Appeal..... | 65 |
| Petition for Writ of Habeas Corpus..... | 1 |
| Petition for Appeal..... | 63 |
| Praecipe for Transcript of Record..... | 69 |
| Stipulation and Order of Substitution of Ap- pellee | 72 |

NAMES OF ATTORNEYS.

FRANK J. HENNESSY, Esq., and MARSHALL
B. WOODWORTH, Esq.,

Grant Building, San Francisco, California,
For Petitioner and Appellant.

UNITED STATES ATTORNEY,

San Francisco, California,

For Respondent and Appellee.

In the Southern Division of the United States
District Court, for the Northern District of
California, Second Division.

No. 20,938-L.

In the Matter of

HOO GAN TZE, #30782/5-21 Ex. S. S.

President Lincoln, Sept. 8, 1931; son of
native;

On Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable United States District Judge, now
presiding in the United States District Court,
in and for the Northern District of California,
Second Division:

It is respectfully shown by the petition of Hoo
Loy that Hoo Gan Tze, hereafter in this petition
referred to as the "detained," is unlawfully impris-
oned, detained, confined and restrained of his liberty
by John D. Nagle, Commissioner of Immigration
for the port of San Francisco, at the immigration

station at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to-wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 5, 1882, July 5, 1884, November 3, 1893, and April 29, 1902, as amended and re-enacted by Section 5 of the Deficiency Act of April 7, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and the Immigration Act of 1924; and that he, the said Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China. [1]*

That the Commissioner claims that the said detained arrived at the port of San Francisco on or about the 8th day of September, 1931, on the steamship "President Lincoln," and thereupon made application to enter the United States as a citizen thereof by virtue of being the foreign born son of your petitioner, Hoo Loy, a native born citizen of the United States, and that the application of said detained to enter the United States as a citizen thereof was denied by said Commissioner of Immigration and a Board of Special Inquiry, and that

*Page numbering appearing at the foot of page of original certified Transcript of Record.

an appeal was thereupon taken from the excluding decision of said Commissioner of Immigration and said Board of Special Inquiry to the Secretary of the Department of Labor, and that said Secretary thereafter dismissed said appeal; that it is claimed by said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of said Commissioner and said Board of Special Inquiry and said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statutes in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner alleges upon his information and belief that the hearing and proceedings had herein, and the action of said Board of Special Inquiry and the action of said Secretary of Labor was and is in excess of the authority committed to them by the said rules and regulations and by said statutes, and that the denial of said application of said detained to enter the United States as a citizen thereof by virtue of being the foreign born son, your petitioner, Hoo Loy, a native born citizen of the United States, was and is an abuse of the authority committed to them by said statutes, and in this behalf your petitioner alleges:

[2] That the said Hoo Gan Tze is the blood son of your petitioner, Hoo Loy, a native born citizen of the United States; that the citizenship of your petitioner has been conceded by the Department of

Labor; that the said detained, Hoo Gan Tze, being the blood son of your petitioner, by virtue of Section 1993 of the Revised Statutes of the United States, is a citizen thereof; that the detained was accorded upon his application for admission a hearing before a Board of Special Inquiry of the Immigration Service; that your petitioner, detained's father, and also the detained's mother, two prior landed brothers and a prior landed sister, of the detained, appeared as witnesses and testified for and on behalf of the detained, and the aforesaid testimony, together with the records of the family now in the files at the Bureau of Immigration, was considered by the aforesaid Board of Special Inquiry; that the Board of Special Inquiry denied admission to the detained; that thereafter an appeal was taken to the Secretary of Labor from said decision and the appeal was dismissed and the detained ordered deported.

That your petitioner is informed and believes and therefore alleges the fact to be that the sole ground for the denial is based on alleged discrepancies and variances in the testimony of the aforesaid witnesses which said testimony was reported to have been given by said witnesses at the hearing accorded the said detained by the aforesaid Board of Special Inquiry; that your petitioner alleges the variances in the said testimony are not serious discrepancies and do not relate to material matters.

That your petitioner further alleges that the records of the Immigration Bureau are conclusively

favorable to the detained. That said detained was born in 1907 and the first mention of the fact that he was the blood son of your petitioner and his wife, Yee Shee, was made in 1911; that there- [3] after, in appearances and testimony given by various members of the family, he has always been mentioned and referred to as the blood son of your petitioner.

That word was first received of the Department of Labor's decision April 8th, 1932, and your petitioner was informed that deportation would take place on the same day, viz: April 8th, 1932, at 4 o'clock P.M., ex steamship "President McKinley."

That your petitioner has not had time, owing to the sudden notice of the order of deportation and the proximity of the sailing of the steamship "President McKinley," to secure copies and excerpts from the Immigration Records of the Department of Labor, with the exception of Exhibits hereto attached; that as soon as possible, your petitioner will present the same to the Court for its consideration.

That a copy of a brief of counsel for the detained filed with the Department of Labor, marked Exhibit "A," and a copy of a Summary of the Board of Special Inquiry, marked Exhibit "B," are attached hereto and made a part hereof.

That it is the intention of said Commissioner of Immigration to deport the detained out of the United States and away from the land of which he

is a citizen by the steamship "President McKinley," sailing from the port of San Francisco April 8th, 1932, at 4:00 P. M., and unless this Court intervenes to prevent this deportation the said detained will be deprived of residence within the land of his citizenship.

That the said detained is in detention at the Immigration Station at Angel Island, County of Marin, State of California, and cannot for said reason verify this petition, and the same is therefore verified by your petitioner, detained's father, upon his behalf.

That the said Hoo Gan Tze, the detained person, has exhausted all his rights and remedies and has no further remedy [4] before the Department of Labor, and unless the writ of habeas corpus issue out of this Court as prayed for herein, directed to John D. Nagle, Commissioner, as aforesaid, in whose custody the body of said Hoo Gan Tze is, said Hoo Gan Tze will be deported from the United States to China without due process of law.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner commanding and directing him to hold the body of the detained within the jurisdiction of this Court, and to present the body of said detained before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into, to the end that the said de-

tained may be restored to his liberty and go hence without day.

Dated, San Francisco, California, April 8th, 1932.

JOSEPH P. FALLON,

Attorney for Petitioner and Detained. [5]

State of California,

City and County of San Francisco.—ss.

Hoo Loy, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition, that he has heard said petition read and explained, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters he believes them to be true.

HOO LOY.

Subscribed and sworn to before me this 8th day of April, 1932.

[Seal]

HARRY L. HORN,

Notary Public in and for the City and County of San Francisco, State of California. [6]

EXHIBIT "A."

March 30, 1932.

The Honorable,
The Secretary of Labor,
Washington, D. C.

Sir: In re Hoo Gan Tze
 Department No. 55806/205.

This case has previously been before the Department and had its careful consideration. The facts as they existed up to the time of the previous consideration are discussed in my brief of November 27, 1931, and also in the Department's memorandum analyzing the case and finding against the applicant. While at the time the case was previously considered there were some collateral discrepancies in the testimonial evidence, it seemed to me that the matter could fairly be regarded as quite close because of the many circumstances and bits of direct evidence which seemed to establish reasonably and satisfactorily that, discrepancies on collateral matters to the contrary, the applicant is the son of his citizen father, Hoo Loy.

Subsequent to its unfavorable action, the Department very generously reopened the case in order that additional evidence might be taken. The case now comes up for further consideration, and we find in the record, in addition to the previous evidence, the testimony of a brother of the applicant, a young man named Hoo Dan Sen, who was examined at Cincinnati, Ohio. His statement is straight

forward and convincing and does not disagree in material respects with previous recorded evidence of numerous members of the family. The memorandum of the Board of Special Inquiry in discussing his testimony, points out the respects in which it bears upon the discrepancies previously mentioned. He states that the wife of his uncle, Hoo Yoo Hing, is living, thus disagreeing with the applicant's recorded testimony, but agreeing with that of other witnesses. I pointed out in my previous brief the great possibility that the applicant had been the victim [7] of a misunderstanding in connection with this matter, and also showed that a full effort to run down the leads offered by the applicant's testimony and the testimony of the other witnesses, had not been made in the examination. I still believe that had this matter been properly inquired into so far as the applicant is concerned, there would have been no discrepancy. The witness also apparently disagrees slightly as to the number of the children of the uncle, Hoo Yoo Hing, but this is probably nothing but an error on his own part, caused by the quite numerous children whom the uncle is the father of. So far as the paternal grandmother is concerned, it appears that she died when the applicant was little more than an infant, and it seems to me that under such conditions he should be pardoned for not having a definite recollection with respect to her. The circumstances establish nothing except that the boy

has not been coached as to what he should testify to in this proceeding.

The additional witness in this case has given evidence which unquestionable is of value in connection with a determination of the applicant's status. His testimony is favorable in all material respects, and coupled with the other evidence of record, would seem to fully and fairly establish the status of the applicant. I invite particular attention also to the fact that the additional witness made a very favorable impression upon the inspector who examined him at Cincinnati, Ohio.

There are, as previously mentioned, many favorable facts and circumstances in this case. In spite of the fact that the examination has been long and tedious, these numerous witnesses are in agreement in their respective statements with regard to practically all the multitude of details inquired into; and furthermore, throughout the proceedings their demeanor uniformly has been of the best. They are in spontaneous and convincing agreement with respect to practically all [8] matters relating to the family, the numerous members thereof their ages, marital status, travels, present and past whereabouts, etc. They also agree with respect to a multitude of collateral things, as noted in my previous brief.

The array of affirmative evidence is unusually strong and convincing. The applicant is identified by his father and mother, than whom there could

be no better qualified witnesses, and also by his brother and sister. He in turn has promptly and convincingly identified each one of these close relatives of his. The identifications by all witnesses were both by photograph and in the flesh, all of these people having promptly and convincingly identified each other when brought into the same room together. Their sworn statements in the record, and particularly their sworn identifications of each other, are not impeached in the slightest respect.

The prior records of the Government are conclusively favorable to the cause of the applicant. The applicant was born in 1907, and ever since 1911 has been named and claimed as a member of this family as a son of Hoo Loy and his wife, Yee Shee, by all members thereof who have appeared before immigration officials. As stated, the first such mention was in 1911, some 20 years ago. The description given for the applicant on these many prior occasions, by the father, mother, brother, and sister, is in agreement with the present testimony and also with the applicant as he appears in person; the important thing to bear in mind in this latter connection is the fact that the applicant is the age which he must be to be the child named and described so long ago, in 1911, by the father. Furthermore, I believe that a comparison of the photographs of various members of this family will show a good general resemblance between them, a resemblance which is further evidence of the relationship. [9]

The status of this applicant being, as I believe, conclusively established beyond a reasonable doubt, I respectfully move that the appeal be sustained.

Respectfully,
(Signed) CHAS. E. BOOTH,
Attorney for Applicant. (10)

EXHIBIT "B."

Hoo Gan Tze, 30782/5-21 ex steamship President
Lincoln, Sept. 8, 1931; son of native.

February 17, 1932.

SUMMARY.

This applicant, Hoo Gan Tze, was excluded by the Board October 14, 1931. An appeal was taken from this decision, which appeal was dismissed by the Department on December 9, 1931. On January 11th the Bureau ordered a reopening of the case, specifying that further investigation should include the hearing of Hoo Gwing Sen, alleged older brother of the applicant. This alleged brother was suggested as a witness in this case at the time of the preliminary hearing at this station, but his appearance was specifically waived by the principals. Statement of Hoo Gwing Sen was accepted at Cincinnati, Ohio, where he appeared on January 28th, and February 1st, and the same, together with the report of the examining officer, is now before us, and is incorporated into the record.

As noted by the examining officer, Hoo Gwing Sen's testimony contains many discrepancies as

compared with the statements of the witnesses heard at this station. A review of his testimony shows that on nearly every one of the discrepancies and unsatisfactory features listed in my previous summary of this case, he disagrees in some particular with one or another of the five witnesses examined at the original hearing, being at greater variance with the applicant than any of the others. I believe mention of a few of the outstanding discrepancies will suffice to show that the additional evidence further confirms the Board's opinion reached at the original hearing in this case.

Regarding the family of the alleged paternal uncle, which feature was discussed in the 5th and 6th paragraphs of the previous summary, Hoo Gwing Sen states that his uncle has had but one wife and that wife is still living. He gives [11] the uncle seven sons and two daughters, describing all of them, while applicant gives the uncle only six sons and one daughter and states this uncle never had any other children.

Hoo Gwing Sen says that his paternal grandmother lived in the same house with his parents until her death, CR 3-6-3 (July 25, 1914). Applicant has no recollection of ever seeing his paternal grandmother. Applicant does not know whether she died before or after his own birth. If he were born March 28, 1907, the date now given for his birth, he should have been living in the same house with his paternal grandmother until he was over 7 years old, our reckoning. In this connection it

should be noted that the alleged younger sister of the applicant, Hoo Ngook Lon, indicates that she remembers her paternal grandmother.

Similarly, the new witness testifies his paternal grandfather died in CR 12 (1923), while he himself was in the U. S. Applicant has testified that this older brother of his attended the grandfather's funeral.

Referring to the 4th paragraph of the previous summary, regarding the parents of the alleged mother, Hoo Gwing Sen states that he has heard his mother's mother is still living but that her father died about 8 or 9 years ago; that he died a little over a year after he himself first came to the U. S. in April, 1922.

The witness first agreed with the applicant regarding the approximate time of the latter's marriage (in CR 18-11) (Dec., 1929). However, on his second appearance some days later he volunteered the information that he had made a mistake in the first statement, that the applicant was married in CR 17 (1928), while he (Hoo Gwing Sen) was in the U. S. He further states that the applicant was married before he himself returned to China, February 15, 1929. Note that it is claimed this witness returned to the home village [12] upon his arrival in China in 1929 and lived there in the same house with the applicant for several days prior to moving to another village.

The alleged older brother disagrees with the applicant concerning the location of the houses in their

own row, the spaces between the houses in all rows, the location of the two houses belonging to the alleged uncle's family, the number of toilets in the village and direction in which the toilet doors face, sleeping arrangements in their home prior to 1922, and numerous other features. I do not find a single instance in which this alleged brother offers a reasonable explanation of discrepancies called to his attention.

Because of the features described, I am of the opinion that the evidence submitted does not satisfactorily establish the relationship alleged to exist in this case, and I move that the applicant be denied admission to the U. S. on the grounds specified in my motion of October 14th, 1931, in this case.

By Member PIERCE.—I second the motion.

By Member ROGERS.—I concur.

(M. A. Moore) chairman.

[Endorsed]: Filed April 8, 1932, 1:14 P. M.
Walter B. Maling, Clerk. [13]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the verified petition on file herein,

It is **HEREBY ORDERED** that John D. Nagle, Commissioner of Immigration for the port of San Francisco, appear before this Court on Monday, the 18th day of April, 1932, at the hour of 10 o'clock

A. M. of said day, to show cause, if any he may have, why a writ of habeas corpus should not be issued herein as prayed for, and that a copy of this order be served upon the said Commissioner, and a copy of the petition and said order be served upon the United States Attorney for this District, his representative herein; and

IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration, as aforesaid, or whoever, acting under the orders of said Commissioner or the Secretary of Labor, shall have the custody of said Hoo Gan Tze, or the master of any steamer upon which he may have been placed for deportation by said Commissioner, are hereby ordered and directed to retain said Hoo Gan Tze within the custody of said Commissioner of Immigration and within jurisdiction of this Court, until its further order herein.

Dated, San Francisco, California, April 8th, 1932.

HAROLD LOUDERBACK,

United States District Judge.

[Endorsed]: Filed April 8, 1932, 1:51 P. M.
Walter B. Maling, Clerk. [14]

[Title of Court and Cause.]

APPEARANCE OF RESPONDENT AND NOTICE OF FILING EXCERPTS OF TESTIMONY FROM THE ORIGINAL IMMIGRATION RECORD.

To the Petitioner in the above entitled matter, and to Joseph P. Fallon, Esq., his attorney:

Please take notice, that the respondent hereby appears in the above entitled matter and will, upon the hearing on the order to show cause, rely upon certain excerpts of testimony from the original immigration record additional to the portions of such records which are set out in the petition for writ of habeas corpus herein, a copy of such additional excerpts being annexed hereto. Please examine same prior to the hearing on the order to show cause.

Dated, June , 1932.

United States Attorney,
Attorney for Respondent. [15]

[Title of Court and Cause.]

RESPONDENT'S MEMORANDUM OF EXCERPTS OF TESTIMONY FROM THE ORIGINAL IMMIGRATION RECORD.

The witnesses herein are:

HOO GAN TZE, the applicant, who claims birth on March 28, 1907, and was never in the United States.

HOO LOY, alleged father of the applicant, born July 14, 1878, at San Francisco, California, who was in China from 1880 to 1889, from January, 1903, to June, 1908, and from April, 1911, to March, 1914.

YEE SHEE, alleged mother of the applicant, aged 47 years, who first came to the United States in 1922 and who has not since been in China.

HOO GING PON, alleged brother of the applicant, aged 20 years, who came to the United States in 1919 and was back in China from October, 1923, to September, 1927.

HOO NGOOK LON, alleged sister of the applicant, aged 24 years, who came to the United States in 1922 and has been here ever since.

HOO GWING SEN, alleged brother of the applicant, aged 28 years, who came to the United States in 1922 and was back in China from February, 1929, to May, 1930.

The applicant has been denied admission into the United States on the ground that he has failed to satisfactorily establish that he is the son of Hoo Loy.

There is set forth below from the original immigration record some of the pertinent testimony.

I.

HOO LOY testified in his own behalf on March 22, 1911, as follows:

“Q. Have you any children?

A. 2 boys, one girl.

Q. Names, ages and birthdates?

A. Hoo Sin, 7, born KS 31-2-15; Hoo See, 5, born KS 33-4-19 (May 30, 1907); girl is Hoo Lan, 4, born KS 34-1, don't know day; all in China."

(Immigration Record # 12017/9814, p. 27.)

Again, on March 23, 1914, he testified in his own behalf, as follows:

"Q. How many children have you ever had?

A. 4 boys, 1 girl.

Q. Give name, sex, age, date of birth, and present location of each.

| Name | Age | Sex | Birthdate | Location |
|---------------|-----|-----|-------------------------------|----------|
| Hoo Gwing Sin | 10 | M. | KS-30-1-10 | China |
| " " See | 8 | M. | KS-32-2-15 (March 9, 1906) | " |
| " " Fon | 2 | M. | CR-1-1-24 | " |
| " " Foon | 1 | M. | CR-3-1-2 | " |
| " Larn Foon | 7 | F. | KS-34-3-5 | " |

(Id. p. 30.)

Again, in his own behalf, on November 1, 1917:

"Q. How many children have you ever had?

A. 4 boys, 1 girl.

Q. Furnish following data as to each:

| Name | Age | Sex | Birthdate | Present whereabouts |
|--------------|-----|-----|--------------------------------|---------------------|
| Hoo Gwen Sin | 13 | M. | KS-31-1-10 (Feby. 14, 1905) | China |
| " " See | 11 | M. | KS-33-2-15 (Mch. 28, 1907) | " |
| " " Fon | 6 | M. | CR-1-1-24 (Mch. 12, 1912) | " |
| " " Foon | 5 | M. | CR-2-1-? (Feby./Mch., 1913) | " |
| " Ngook Lan | 10 | F. | KS-34-4-5 (May 4, 1908) | " |

(Id. p. 33.) [17]

HOO GAN TZE testified in connection with the present application on October 9, 1931, as follows:

“I am 25 years old; born K. S. 33-2-15 (Mar. 28, 1907), at Tung Sing Village, H. P. D., China, where I lived from the time of my birth until I left to come to the U. S.”

* * * * *

“Q. How did you learn the date of your birth?

A. My mother told me my birthdate.

Q. Did you ever hear a different birthdate for yourself?

A. No.

Q. When your alleged father first mentioned a son of the name you claim he gave that son's birthdate as K. S. 33-4-19 (May 30, 1907). How do you account for that?

A. I do not know why; I never heard of that birthdate. I have always used K. S. 33-2-15 (Mar. 28, 1907).”

(Id. p. 42.)

YEE SHEE testified in connection with the present application on October 7, 1931, as follows:

“Q. How many children have been born to you and your husband?

A. Eight sons and two daughters.

Q. Give the names, ages, dates and place of birth and present whereabouts of your children.

A. Hoo Gwing Sen, age 27, born KS 31-1-10 (Feb. 13, 1905) at Tung Sing Village, Hpd,

now somewhere in the eastern part of the U. S.;

Hoo Gwing Tze, age 25, born 33-2-15 (Mar. 28, 1907) at Tung Sing Village; applicant.”

(Id. pp. 19 and 20.)

HOO LOY testified in connection with the present application on October 7, 1931, as follows:

“Q. How many children have been born to you and your wife?

A. Eight sons, two daughters.

Q. Give the names, ages, dates, places of birth and present whereabouts?

A. Hoo Gwing Sen, age 27, born KS 31-1-10 (Feb. 13, 1905) at Tung Sing Village, now in Cincinnati, Ohio; Hoo Gwing (Gan) Tze, age 25, born KS 33-2-15 (Mar. 28, 1907) at Tung Sing Village, now applicant.

* * * * *

Q. Where did you obtain the information about the applicant's birthdate which you have in that memorandum?

A. I have a book at home which shows the dates of the births of my children.

Q. How long have you had that book?

A. Over ten years.

Q. Did you have that book at the time the applicant was born?

A. No. [18]

Q. How do you explain the fact that on at least three different occasions you have given three different birthdates for your alleged second son, these dates extending over a period of more than one year?

A. I do not know; I cannot explain.

Q. The fact that you have given these different birthdates for your second son while always being consistent as to the birthdates of your other alleged children and that you have left this alleged son in China for many years after bringing all the rest of your children to this country indicates that you really have no such son or that if you did have such a son he has died. Have you any explanation to give?

A. I left that son home until now so that he could attend Chinese school and to manage the affairs at home; as far as I can recall I have always given the birthdate as I have given it today.”

(Id. pp. 13, 14, 15.)

II.

HOO LOY testified in connection with the present application on October 7, 1931, as follows:

“Q. Is your father still living?

A. No, my father died about six years ago at Tung Sing Village. My mother died some time in CR 3 (1914) in Tung Sing Village.

* * * * *

Q. Was your mother living in the same house as your family at the time she died?

A. Yes.

Q. Was your father living in the same house with you at the time you were last in China?

A. Yes.

* * * * *

Q. Why was it that your father lived in your house rather than your older brother's house?

A. I do not know why; my father had always lived in my house.

* * * * *

Q. With whom has this applicant been living since your wife came to this country?

A. He was living with my father until my father's death.

Q. Were he and your father the only occupants of your house during that period?

A. Yes, the only ones.

Q. Was your father living in your house at the time you left China in CR 3 (1914)?

A. Yes.

Q. That does not agree with your previous testimony. How do you explain that?

A. I do not know why; my father and mother always lived with my family."

(Id. pp. 15, 16, 17.) [19]

YEE SHEE testified in connection with the present application on October 7, 1931, as follows:

"Q. Are your husband's parents living?

A. No, both are dead.

Q. Did you ever see either of them?

A. Yes, I have seen both.

Q. What are their names and when and where did they die?

A. My father-in-law was Hoo Git Gong, I do not know the exact date of his death, but

he died about the 9th month the year following my admission to the U. S. (about Oct., 1923). My mother-in-law was Jew Shee, died the early part of the 6th month of CR 3 (July, 1914).

* * * * *

Q. Did your father-in-law always have his meals with the other members of your household?

A. Yes.

Q. Why did he not eat with his oldest son's family?

A. Because he lived in the same house with me, but sometimes he took a meal at his other son's house."

(Id. pp. 21 and 37.)

HOO GING PON testified in connection with the present application on October 8, 1931, as follows:

"Q. Is your paternal grandfather living?

A. No.

Q. What were all his names, and when and where did he die?

A. Hoo Git Gum; I do not know his other name; he died sometime between my first departure from China, and my return to China.

Q. Did your paternal grandfather ever live in the same house with you in China?

A. Yes, previous to my first coming to this country.

Q. Did he always live in the same house with you previous to the time you first came to the U. S.?

A. No, I cannot say that because it happened so long ago, but I do remember that I was living with him in the same house before I first came to this country."

(Id. p. 24.)

HOO NGOOK LON testified in connection with the present application on October 8, 1931, as follows:

"Q. Did you always live in the Tung Sing Village while you were in China?

A. Yes.

* * * * * [20]

Q. Are your father's parents living?

A. No.

Q. Did you ever see either of them?

A. Yes, both of them.

Q. What were their names?

A. Hoo Git Gum; my grandfather. I do not know the name of my grandmother.

Q. Were they both living when you first came to this country?

A. At the time I came my grandfather was still living; my grandmother was dead.

Q. Where did they live in China?

A. In the same house with us.

* * * * *

Q. While you were in China, did your brother, the applicant, always live in the same house with you?

A. Yes.

Q. How large a place is the Tung Sing Village?

A. There are just about 15 houses."

(Id. pp. 32, 33, 34.)

HOO GAN TZE testified in connection with the present application on October 9, 1931, as follows:

"Q. Are your paternal grandparents living?

A. No.

Q. Did you ever see either of them?

A. No.

Q. Do you know their names?

A. Paternal grandfather was Hoo Ming Fong; I think he died when I was three or four years old. Paternal grandmother was Jew Shee; I do not know when she died.

Q. Has your father any brothers or sisters?

A. One brother, no sisters.

Q. Have you met your father's brother?

A. Yes.

Q. Describe him.

A. Hoo You Hing, or Hoo Gim, aged 57, now in business in Sun Chung City. I made a mistake about when my paternal grandfather died; he only died some ten years ago.

Q. Where did your paternal grandfather die?

A. At the Tung Sing Village.

Q. How does it happen you never saw him?

A. I didn't mean to say that; I have not seen my paternal grandmother, but have seen my paternal grandfather.

Q. Do you remember seeing your paternal grandfather?

A. Yes.

Q. How did you happen to make the statement that you believe he died when you were 3 or 4 years old?

A. I was just confused.

* * * * *

Q. Where did your paternal grandfather die?

A. At our house at the Tung Sing Village.

Q. Who was living in that house at the time your grandfather died? [21]

A. My mother, my brother, Ging Pon, my brother, Gwing Sen, my sister, Ngook Lon; that is all.

Q. Did your paternal grandfather die before your brother, Hoo Gwing Foon, was born?

A. Gwing Foon was already born then, but as he was only a small fellow I did not name **him**.

Q. Did you and your first and third brothers attend your grandfather's funeral?

A. Yes.

Q. Did your sister also attend his funeral?

A. Yes."

(Id. pp. 44, 45.)

HOO GWING SEN testified in connection with the present application on January 28, 1932, as follows:

“Q. How old were you when your father’s father died?

A. I think I was 19. He died in C. R. 12; after I had come to the United States.

Q. What was your father’s father’s name?

A. Hoo Ming Fong.”

(Id. p. 120.)

“Q. Were your paternal grandparents living in the same house with your brother, Gwing Pon, before he came to the United States in C. R. 8?

A. Only my grandfather. My grandmother was dead.

* * * * *

Q. In whose house did your father’s father die?

A. In the house where I lived.

Q. Who was living in that house when your grandfather died?

A. My brother, Gan Tze, was the only one. The rest of us were in the United States.”

(Id. p. 121.)

III.

HOO LOY testified in connection with the present application on October 7, 1931, as follows:

“Q. Are your wife’s parents living?

A. Her father is dead; her mother is living.

Q. What was her father’s name and when did he die?

A. Yee Jin Wah, died 7 or 8 years ago.”

(Id. pp. 16, 17.)

HOO NGOOK LON testified in connection with the present application on October 8, 1931, as follows:

“Q. Are your mother’s parents living?

A. I do not know; at the time I came to the U. S. my mother’s parents were both living.”

(Id. p. 34.) [22]

HOO GAN TZE testified in connection with the present application on October 9, 1931, as follows:

“Q. Are your mother’s parents living?

A. My maternal grandfather is dead; my maternal grandmother is living.

Q. Have you met your mother’s parents?

A. I have never seen my maternal grandfather, but I saw my maternal grandmother when I was a very small boy. At present I have no recollection of her.

Q. Did your mother’s father die before you were born?

A. I do not know whether he died before or after my birth.

Q. How do you know that he is dead?

A. Because when I visited my maternal grandparents’ house when I was young, I only saw my maternal grandmother there, and I have heard that my maternal grandfather was no longer living.

Q. Did your mother ever tell you that her father was dead?

A. Yes.”

(Id. p. 47.)

HOO GWING SEN testified in connection with the present application on January 28, 1932, as follows:

“Q. Are your mother’s parents living?

A. No, they are both dead; they died a long time ago.

Q. Did you ever see either one of them?

A. No, they both died before I was born.

Q. In 1919 your father and your brother, Gwing Pon, said that your mother’s mother was then living. What have you to say to that?

A. I made a mistake a moment ago. I thought you were talking about my great-grandparents.

Q. I ask you again, if your mother’s parents are living.

A. I have heard that my mother’s mother is still living; but my mother’s father died about 8 or 9 years ago.

Q. Were you at home in China when your mother’s father died?

A. No, I was in the United States.

Q. How long had you been in the United States when your mother’s father died?

A. A little over a year.

Q. In January, 1922—3 months before you came to the United States, the first time—your father said that your mother’s father had died that year. What have you to say to that?

A. I thought he died after I came to the United States, but I am not sure.”

(*Id.* pp. 123, 124.) [23]

IV.

HOO LOY testified in connection with the present application on October 7, 1931, as follows:

“Q. How many brothers and sisters did you ever have?

A. Just one brother; no sisters.

Q. What are your brother’s name, age and whereabouts?

A. Hoo Gim, Hoo You Hing, Hoo Gim Leung, age 54 or 55, now in business in Sun Ching City.

Q. How many times has your brother been married?

A. One time.

Q. Describe his wife?

A. Yee Shee, age about 50, she had bound feet the last time I saw her, now in the Tung Sing Village.”

(Id. pp. 15 and 16.)

HOO GING PON testified in connection with the present application on October 8, 1931, as follows:

“Q. Describe the wife of your uncle?

A. Yee Shee, 50 odd years old, has bound feet, now living in Tung Sing Village.

* * * * *

Q. Did he ever have more than one wife?

A. No, not to my knowledge.”

(Id. p. 27.)

HOO NGOOK LON testified in connection with the present application on October 8, 1931, as follows:

“Q. Has your father any brothers or sisters?

A. Just one older brother; no sisters.

Q. Have you met your father's brother?

A. Yes, before I came to the U. S.

Q. What is his name, age and occupation?

A. Hoo You Hing, 50 odd years old, now at the Tung Sing Village.

Q. Is your uncle a married man?

A. Yes.

Q. Describe his wife.

A. I am not sure whether her name is Yee Shee; she is about 50 years old, has bound feet.”

(Id. p. 33.)

YEE SHEE testified in connection with the present application on October 9, 1931, as follows:

“Q. Has the applicant always lived in the 5th house of the second row?

A. Yes.

Q. Where is the house of your husband's brother?

A. He lives in the 1st house, 3rd row from the gate.

Q. Is that the only house your brother-in-law owns in the village?

A. Yes. [24]

Q. Did his entire family live in that house?

A. Yes, when I was there, but I heard since I left that he had built a new house somewhere in the village; I do not know whether

he is still living in the old house, or in the new house.”

(Id. p. 37.)

HOO GAN TZE testified in connection with the present application on October 9, 1931, as follows:

“Q. Is your father’s brother married?

A. Yes.

Q. How many wives has he?

A. Only one.

Q. Describe her.

A. Yee Shee, 50 odd years old, had bound feet; she is dead.

Q. When did your uncle’s wife die?

A. She died a long time ago; I have no recollection of when she died.

Q. Then, you do not recall ever seeing your uncle’s wife?

A. No.

Q. How are you able to give her name and age?

A. I was told by my mother that my aunt was Yee Shee—I meant she would be about that age if living because my uncle is 57 years old.

Q. Did your father ever have more than the one brother whom you have named?

A. No.”

(Id. p. 45.)

HOO GWING SEN testified in connection with the present application on January 28, 1932, as follows:

“Q. Is your father’s brother married?

A. Yes, he has been married once.

Q. Did you ever meet his wife?

A. Yes.

Q. Describe her.

A. I don’t know what her name was, but she had natural feet and she is about the same age as my uncle.

Q. When and where did you see her the last time?

A. C. R. 18 I met her in Tung Sing Village. She was living there with her husband and her son, Hoo Wee Sang.

Q. In what house in the village did they live?

A. 2nd house, 2nd row from the north.”
(Id. p. 121.)

V.

HOO LOY testified on October 7, 1931, as follows:

“Q. What family has your brother? [25]

A. Four sons and one daughter.

Q. What are the names, ages and whereabouts of his sons?

A. Hoo Way Sang, age about 30, now in Tung Sing Village; Hoo Way Hok, age 27 or 28, now at home; Hoo Way Ngoon, age about 25, at home; Hoo Way How, age about 18, now at home; Hoo Gim Soo, daughter, age about 20, now at home.”

(Id. p. 16.)

YEE SHEE testified on October 7, 1931, as follows:

“Q. What family has your brother-in-law?

A. At the time I came to the U. S. he had a wife, about four sons and one daughter.

Q. Does his family live in your village?

A. Yes.

Q. Did they live in the same house with you?

A. No.

Q. Describe the children of Hoo You Hing?

A. Hoo Way Sang, then about 17 or 18; Hoo Way Hok, then about 15 or 16; Hoo Way How, then a little over 10; Hoo Way Ngoon, about 7 or 8 at that time; Hoo Gim Soo, the daughter, several years old at that time.”

(Id. p. 22.)

HOO GING PON testified on October 8, 1931, as follows:

“Q. What family has your father’s brother?

A. 7 sons, 1 daughter.

Q. Have you met them all?

A. Yes.

Q. Give their names, ages and present whereabouts.

A. His sons are: Hoo Way Sang, about 30 years old; in China; Hoo Way Hok, about 28 years old, in China; Hoo Way Ngoon, about 25, in China; Hoo Way How, about 17, in China; Hoo Way Jong, about 10 years old, in China; Hoo Way Keung, about a year or two younger, in China; Hoo Way Hung, about 7 years old,

now in China; his daughter, Hoo Gim Soo, about 20 years old, in China.”

(Id. p. 26.)

HOO NGOOK LON testified on October 8, 1931, as follows:

“Q. What family has your uncle?

A. All I know is that he has 3 sons and 1 daughter.

Q. What are their names, ages and whereabouts?

A. Hoo Way Sang, about 30 years old; Hoo Way Hok, about 25; Hoo Way Ngoon, about 20. The daughter is Hoo Gim Soo, around 21 years old; all are at Tung Sing Village.”

(Id. p. 33.)

HOO GAN TZE testified on October 9, 1931, as follows:

“Q. What family has your father’s brother?

A. Six sons and one daughter.

Q. Give the names, ages and whereabouts of all your uncle’s children.

A. Hoo Way Sang, about 30 years old; Hoo Way Hok, 28 years old; Hoo Way Ngoon, 25 years old; Hoo Way How, 18; Hoo Way Jong, 10 years old; Hoo Way Keung, 9 years old; his daughter’s name is Hoo Gim Soo, 20 years old. All are living at Tung Sing Village.

Q. Did your uncle ever have any children who died?

A. No.

Q. Did your uncle ever have a son named Hoo Way Him?

A. No.

Q. Did your uncle ever have a son named Hoo Way Hay? [26]

A. No.

Q. One of your alleged brothers has testified that his father's brother has two sons by those names.

A. I cannot account for his statement. My uncle has not such sons by those names.

Q. Your alleged sister has testified that your uncle has never had a son by the name of Hoo Way How. How do you explain that?

A. My uncle has a son by the name of Way How. I do not know why she made such a statement.

Q. Did your uncle ever have a son named Hoo Way Him?

A. No.

Q. Your alleged father testifies that that is the name of one of his brother's sons.

A. I never heard of my uncle having such a son."

(Id. pp. 45, 46.)

HOO GWING SEN testified on January 28, 1932, as follows:

"Q. What family has your father's brother?

A. My uncle has 7 boys and 2 girls.

Q. Give me the name, age and whereabouts of each.

A. The oldest is a boy, Hoo Way Sang, about 29. The next is a boy named Hoo Way Hok, about 27; next is a boy named Hoo Way Nging, about 24; next is a boy, Hoo Way How, about 16 or 17; next is a boy, Hoo Way Jong, about 13 or 14; next is a boy, Hoo Way Keung, about 11; next is a boy, Hoo Way Hong, I don't know how old he is, but he is the youngest of the boys. The older daughter is Hoo Gim Soo, about 20 years old, and the younger daughter is, I think, Hoo Gim Yook, I don't know how old she is. My uncle just told me her name. When I left China my uncle and his wife and his son, Way Sang, and his wife, lived in the 1st house, 2nd row from the north. I've heard, too, that Way Sang has a son living there. All the rest of my uncle's children lived in the 4th house, 2nd row from the north."

(Id. p. 122.)

VI.

HOO GING PON testified on October 8, 1931, as follows:

"Q. When did you first come to the U. S.?"

A. C. R. 8 (1919).

Q. Have you made any trips to China since that time?

A. Yes, one trip; departed C. R. 12-9 (Oct., 1923); returned C. R. 16, about the 8th mo. (Sept., 1927)."

(Id. p. 23.)

“Q. Has your family always lived in the Tung Sing Village in China?

A. Yes. [27]

Q. During your last stay in China were you living in the same house with this applicant all the time?

A. I lived in the same village, but not in the same house.

Q. Why did you not reside in the same house with him?

A. My father wrote home directing that I should live with my first uncle, in the same house.

Q. With whom was this applicant living during that period?

A. He lived in a house by himself, or the house in which I lived previous to my first coming to this country.

Q. Did the applicant occupy that house all by himself during the entire period you were last in China?

A. Yes, by himself.”

(Id. p. 24.)

“Q. How large was the Tung Sing Village when you were there last?

A. It had 16 dwellings in all, but one is not in good repair.

* * * * *

Q. Has this applicant ever lived in more than one house in your village?

A. Just one house, to my knowledge, and that is the 5th house, 2nd row from the south.

Q. Where is the house in which your uncle's family lives?

A. 1st house, 3rd row from the south."

(Id. p. 28.)

'Q. Did you at any time while you were last in China, sleep in the same house with the applicant?

A. No.

* * * * *

Q. In what room was the applicant sleeping when you were in China last?

A. He occupied that whole house, and could sleep where he wanted.

Q. What were the sleeping arrangements in your uncle's house when you were last at home in China?

A. My uncle, his wife, his daughter and his sons Way Ngoon, Way How, Way Jong, Way Keung, Way Hung and myself, occupied the north side bedroom. Way Sang, his wife and his son occupied the south side bedroom."

(Id. p. 29.)

"Q. Do you mean to say that 9 of you slept in that one room, while your brother the applicant had a whole house to himself, and Way Hok and his wife had another whole house to themselves?

A. Yes.

Q. Is there any particular reason for such a peculiar arrangement?

A. I do not know why."

(Id. p. 30.) [28]

HOO GIN TZE testified on October 9, 1931, as follows:

"Q. When did your third brother come to the U. S.?

A. C. R. 8 (1919).

* * * * *

Q. Has he been back to China since?

A. Yes, he made one trip to China.

Q. When was that?

A. C. R. 12-11 (Dec. 1923), he returned to China, and C. R. 16-6 (July 1927) he returned to the U. S.

Q. Did he live in the same house with you while he was in China on that trip?

A. Yes."

(Id. p. 44.)

"Q. During the time your brother Hoo Ging Pon was last in China, were you and he the only persons who occupied the fifth house, second row?

A. Yes.

Q. Did your 3rd brother Hoo Ging Pon ever live in any other house in that village than the 5th house, 2nd row?

A. No."

(Id. p. 48.)

“Q. In what part of the 5th house, 2nd row, did you and your brother Hoo Ging Pon sleep while he was in China from C. R. 12 (1923) to C. R. 16 (1927)?

A. I slept in the south bedroom, and he slept in the north bedroom.

Q. Where did you and your third brother have your meals during that time?

A. We had our meals in our uncle's house.”
(Id. p. 49.)

VII.

HOO GING PON testified on October 8, 1931, as follows:

“Q. Where is your grandfather buried?

A. At the Lung Hill, about 3 or 4 lis south of my village.

Q. Did you visit his grave while you were last in China?

A. No.

Q. Did the applicant visit his grandfather's grave at any time while you were last in China?

A. Yes.

Q. Did he make a practice to go there each year during the Ching Ming Season?

A. Yes.

Q. Why didn't you go along with him?

A. Because I did not want to.

* * * * *

Q. You have never been to the place where your grandfather is buried. Is that right? [29]

A. That is right.

Q. How do you know where he is buried, then, and the location of that place in relation to your village?

A. Because I notice that they started in that direction when they went to visit my grandfather's grave.

Q. Is there any reason for your failure to visit the ancestral graves, other than that you did not desire to do so?

A. I did not want to go because that would tire me from walking."

(Id. p. 25.)

HOO GAN TZE testified on October 9, 1931, as follows:

"Q. Have you made it a practice to visit the graves of your paternal grandparents each year?

A. Yes.

Q. Are they both buried in that hill you mentioned?

A. Yes.

Q. Have you visited the graves of your grandparents in company with your brother Hoo Ging Pon?

A. Yes.

Q. Did you and Hoo Ging Pon visit the graves of your paternal grandparents together, during the Ching Ming Season of each year, when he was last in China?

A. Yes.

Q. Did just the two of you generally go together?

A. We were accompanied by our uncle Hoo Gim and his first three sons."

VIII.

YEE SHEE testified on October 9, 1931, as follows:

"Q. What were the sleeping arrangements in your house, just prior to the time you came to the U. S.?

A. My father-in-law occupied the bedroom on the north side, myself and all my children occupied the bedroom on the south side.

Q. You and your children occupied the large door bedroom. Is that right?

A. Yes.

Q. When was that?

A. When I first got married, I was occupying the small door bedroom for several years.

* * * * *

Q. Did any of your children ever sleep in the north side or small door bedroom of your house while you were at home?

A. No.

Q. How many beds were there in the south side bedroom?

A. Two.

Q. Just prior to the time you left China what persons slept in each of those two beds?

A. My youngest son Gwing Foon and my daughter and myself occupied one bed; Gwing Sen and Gwing Tze occupied the other bed."

(Id. pp. 37, 38.) [30]

HOO GING PON testified on October 8, 1931, as follows:

"Q. What were the sleeping arrangements in your house before you first came to this country?

A. My mother, my first, second and third brothers, my Ngook Lon and myself, occupied the south side bedroom. My paternal grandfather occupied the north side bedroom. That is all."

(Id. p. 29.)

HOO NGOOK LON testified on October 8, 1931, as follows:

"Q. Where did you sleep when you were living in Tung Sing Village?

A. In the south side bedroom.

Q. Who else occupied that bedroom?

A. My mother, my two older brothers, and the brother next to me.

Q. Did anyone sleep in the north side bedroom?

A. My grandfather and my grandmother occupied that bedroom; after my grandmother's death, my two older brothers slept in the same room with my grandfather."

(Id. p. 35.)

HOO GAN TZE testified on October 10, 1931, as follows:

“Q. Describe the sleeping arrangements in your house, prior to the time your mother came to the U. S.?”

A. My mother, my sister, Ngook Lon, my brother Gwing Foon, slept in the south bedroom. My brother Gwing Sen and myself slept in the north bedroom. That is all.

Q. Did you ever sleep in the south side bedroom of your house while your mother was at home?

A. Yes, before I was 12 years old.

* * * * *

[31]

IX.

HOO LOY testified on October 7, 1931, as follows:

“Q. You indicate a space between your house and the fourth house of your row. About how wide is that space?”

A. It is about four feet.

Q. Is that considered a cross alley?

A. It is a small cross alley but it does not extend across the village.”

(Id. p. 18.)

HOO GING PON testified on October 8, 1931, as follows:

“Q. Are all the houses in the various rows separated by spaces as you indicated?”

A. Yes.

Q. You show a somewhat larger space in front of your own house. Is that intentional?

A. Yes.

Q. About how wide is that space?

A. About three feet.

Q. Is that a cross alley which runs between the 4th and 5th houses of all rows?

A. The other spaces are just a little over a foot wide."

(Id. pp. 28, 29.)

HOO NGOOK LON testified on October 8, 1931, as follows:

"Q. Did your house touch the fourth house in your row?

A. No, there is a little alley.

Q. About how wide is this alley in front of your house?

A. Enough space for two persons to walk thru.

Q. Is there a similar space separating each of the 5 houses in your row?

A. Yes, but those spaces are only a few inches wide."

(Id. p. 34.)

YEE SHEE testified on October 9, 1931, as follows:

"Q. About how many houses has the Tung Sing Village?

A. 15 or 16 houses.

Q. How many houses did your husband own in that village?

A. Just one. [32]

Q. Where is that house located in the village?

A. Fifth house, second row, counting from the village gate.

Q. How many houses are there in that row?

A. Five.

Q. Do those houses occupy the first five lots of that row?

A. Yes; there is a cross-alley in front of my house.

Q. About how wide is that cross-alley?

A. About three feet wide."

(Id. p. 37.)

HOO GAN TZE testified on October 10, 1931, as follows:

"Q. You indicate that all the houses in each row in your village are separated by spaces. Is that right?

A. Yes.

Q. About how wide is the space separating your house and the fourth house in your row?

A. About two feet.

Q. Are the spaces separating the other houses in that row and in the third row, about the same width as that in front of your house?

A. Yes.

Q. Is the space between your house and the fourth house in your row, wide enough for a person to pass between those houses?

A. No."

(Id. p. 49.)

X.

HOO GING PON testified on October 8, 1931, as follows:

“Q. Did Way Hok and his wife have their meals with the other members of your uncle’s family?

A. No, they ate separately.

Q. Did Way Sang and his family eat with other members of your uncle’s household?

A. No.

Q. In what part of your uncle’s house were the meals generally served?

A. Sometimes in the parlor, and sometimes in the north side kitchen.

Q. Did you always eat at the same table, at the same time, with your aunt?

A. No, the male members ate first.

Q. Did the applicant always eat at the same table, at the same time, with you?

A. Yes.”

(Id. p. 30.)

HOO GAN TZE testified on October 10, 1931, as follows:

“Q. Who did your cooking at your uncle’s house?

A. I do not know. Whenever meals were ready, I [33] was just called back from school.

Q. In what part of your uncle’s house were the meals usually served?

A. In the parlor.

Q. Were the meals ever served in either kitchen of your uncle's house?

A. Yes. They were served in the south kitchen a few times.

Q. Does your cousin Hoo Way Sang live in the first house, third row?

A. Yes.

Q. Which side of that house do he and his family occupy?

A. The south or large door side.

Q. While you were having your meals at your uncle's house, did all members of that household eat their meals together, at the same table, and at the same time?

A. Yes.

Q. Hoo Way Sang and his family had their meals together with the other members of the household. Is that right?

A. Yes."

(Id. p. 50.)

XI.

HOO GING PON testified on October 8, 1931, as follows:

"Q. Did you attend Hoo Way Hok's wedding?

A. Yes.

Q. Did this applicant also attend that wedding?

A. Yes.

Q. Where was the wedding held?

A. Fourth house, second row, counting from the north.

Q. Is that the house in which he and his family have continued to live?

A. Yes.

Q. Who else occupied that house while you were last in China?

A. No other people.

Q. What side of the house did Hoo Way Hok and his family occupy at that time?

A. The south side.

Q. Were the feasts at his wedding also held in the parlor of that house?

A. There was no wedding feast.

Q. Of what did the wedding ceremony consist?

A. I didn't notice any ceremony."

(Id. p. 28.)

HOO GAN TZE testified on October 9, 1931, as follows:

"Q. Did you attend the wedding of Hoo Way Hok?

A. Yes.

Q. Whereabouts in your village was that wedding held?

A. Fourth house, second row from the north.

Q. How many feasts were held in connection with Way Hok's marriage?

A. Only one feast was held."

(Id. p. 46.) [34]

"Q. Did your brother Hoo Ging Pon attend the wedding of Hoo Way Hok?

A. No, Ging Pon had already left home for the United States; (changes) I made a mistake; I was thinking of Way Ngoon's wedding. He attended Way Hok's wedding.

Q. Did he attend that wedding feast you mention?

A. Yes.

Q. Then why should he say there was no feast held in connection with that wedding?

A. There was one feast held in connection with his marriage; he was married according to the new custom with only one feast. Had he been married according to the old custom, several feasts would have been held.

Q. Where was this wedding feast held in connection with Way Hok's marriage?

A. In the parlor of his house.

Q. Did both you and your brother Ging Pon attend that feast?

A. Yes."

(Id. p. 47.)

XII.

HOO LOY testified on October 7, 1931, as follows:

"Q. When, where and to whom was the applicant married?

A. He was married in C. R. 17 (1928), I do not remember the month or day of his marriage, at Tung Sing Village, to Chin Shee."

(Id. p. 14.)

HOO GAN TZE testified on October 9, 1931, as follows:

“Q. When and where were you married?

A. I was married when I was 23 years old or C. R. 18-11-21 (Dec. 21, 1929) at the Tung Sing Village, to Chin Shee.

Q. Your alleged father says you were married in C. R. 17 (1928). Who is right?

A. I am right. I was married in C. R. 18 (1929).

Q. Who was the first to marry, you or your oldest brother?

A. My brother was married first.”

(Id. p. 44.)

HOO GWING SEN testified on January 28, 1932, as follows:

“Q. When and where was Gan Tze married?

A. He was married in Tung Sing Village C. R. 18-11, and I think the 11th day (Dec. 11, 1929).”

(Id. p. 119.)

and on February 1, 1932, as follows:

“Q. Your father has given a different date than you for the marriage of Gan Tze. What have you to say [35] to that?

A. That's the one I want to tell you about, I made a mistake last Thursday. He was married in C. R. 17, and not C. R. 18, as I told you.

Q. Were you in China when he was married?

A. No, I was still in the United States.

Q. Gan Tze does not agree with you as to the date you have just given for his marriage. What have you to say to that?

A. I just remember my father told me about his marriage before I went to China.

Q. Who was married first, you or Gan Tze?

A. Gan Tze was married first."

(Id. pp. 131, 132.)

XIII.

HOO LOY testified on October 7, 1931, as follows:

"Q. Is this the way the village was at the time you left China in C. R. 5 (1914)?

A. Yes, except there was no house on the fourth space of the second row from the north.

Q. How do you know there is a house there now?

A. My brother built that house there about eight years ago. I am not certain whether the vacant lot on the first row from the south is on the first or the second house space of that row."

(Id. p. 18.)

HOO GING PON testified on October 8, 1931, as follows:

"Q. Have there been any new houses built or any houses destroyed in your village since you left there in C. R. 8 (1919)?

A. No.

Q. Your alleged father does not agree with you about that.

A. There was one new house built, and that is on the fourth space, third row of dwellings from the south.

Q. When was that house built?

A. It was completed just about the time I last arrived in China.

Q. Whose house was that?

A. My uncle's.

Q. Has this applicant ever lived in more than one house in your village?

A. Just one house, to my knowledge, and that is the fifth house, second row from the south.

Q. Where is the house in which your uncle's family lives?

A. First house, third row from the south."

(Id. p. 28.)

HOO GAN TZE testified on October 9, 1931, as follows: [36]

"Q. Have there been any new houses built in your village within your memory?

A. Only one, namely, my uncle's house, or the first house, third row from the south.

Q. When was the first house, third row from the south built?

A. C. R. 10-10 (November, 1921).

Q. Where did your uncle live before that house was built?

A. The fourth house, of the same row.

Q. You mean your uncle formerly lived in the house now occupied by your cousin Hoo Way Hok?

A. Yes.

Q. Then the first house, third row from the south, that is the house just opposite the schoolhouse, is the only new house built in your village as far back as you can remember?

A. Yes."

(Id. p. 48.)

XIV.

HOO GAN TZE testified on October 10, 1931, as follows:

"The applicant, his alleged parents, brother and sister are brought before the Board for physical comparison.

To applicant:

Q. (Indicating alleged father) Who is this person?

A. My father.

Q. (Indicating alleged mother) Who is this person?

A. My mother.

Q. (Indicating alleged sister) Who is this?

A. My sister, Ngook Lon.

Q. (Indicating alleged brother) Who is this?

A. (After long hesitation) My third brother, Ging Pon."

(Id. p. 52.)

United States Attorney,
Attorney for Respondent.

[Endorsed]: Filed Jul. 18, 1932. Walter B. Maling, Clerk. [37]

[Title of Court and Cause.]

ORDER STAYING DEPORTATION.

It appearing to the above entitled Court that the above named Hoo Gan Tze has presented an application for an order allowing an appeal to the United States Circuit Court of Appeals from the order made, rendered and entered by the above entitled Court on the 17th day of August, 1932, denying a petition for a writ of habeas corpus, heretofore filed herein; and it also appearing to said above entitled Court that said Hoo Gan Tze has not had time within which to perfect his said appeal; and it also appearing to said Court that the time within which to perfect said appeal to said United States Circuit Court of Appeals has not expired; and it also appearing to said Court that said Hoo Gan Tze is about to be deported from the port of San Francisco, State of California, at the hour of 4:00 o'clock P. M., on this 26th day of August, 1932, upon the steamship "President Hoover" by the Commissioner of Immigration of the Port of San Francisco, State of California.

NOW, THEREFORE, it is hereby ordered that the execution of the warrant of deportation of said Hoo Gan Tze be and the same is hereby stayed pending this appeal, and that said Hoo Gan Tze be not removed from the jurisdiction of this Court pending said appeal.

IT IS FURTHER ORDERED that said Commissioner of Immigration, John D. Nagle, or who-

ever is acting under the orders of said Commissioner, or the Secretary of Labor and the master of any steamship upon which he may have been placed for deportation by said Commissioner, are hereby ordered and directed to retain said Hoo Gan Tze within the jurisdiction of the Commissioner of Immigration and with the jurisdiction [38] of this Court until it is further ordered herein.

Dated, San Francisco, California, August 26th, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed Aug. 26, 1932, 12:17 P. M.
Walter B. Maling, Clerk. [39]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 18th day of July, in the year of our Lord one thousand nine hundred and thirty-two.

Present: The Honorable HAROLD LOUDERBACK, District Judge, et al.

[Title of Cause.]

This matter came on regularly this day for hearing on order to show cause as to issuance of writ

of habeas corpus. On motion of C. M. Carpenter, Esq., Assistant United States Attorney, and with consent of J. P. Fallon, Esq., ordered said matter submitted upon points and authorities to be filed in 10 and 5 days. [40]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 17th day of August, in the year of our Lord one thousand nine hundred and thirty-two.

Present: The Honorable HAROLD LOUDERBACK, District Judge, et al.

No. 20,938

In the Matter of
HOO GAN TZE,
on Habeas Corpus.

The petition for writ of habeas corpus having been heretofore submitted, and due consideration having been thereon had, it is ordered that the said petition be and the same is hereby denied. [41]

[Title of Court and Cause.]

NOTICE OF MOTION TO VACATE AND SET
ASIDE ORDER STAYING DEPORTA-
TION.

To the Clerk of the above entitled Court and to
the Petitioner herein, and to William M. Staf-
ford, Esq., his attorney:

You and each of you will please take notice that
the respondent John D. Nagle, as Commissioner of
Immigration at the Port of San Francisco, in the
above entitled cause, will on Monday, October 3,
1932, at 10 o'clock A. M. of said date, or as soon
thereafter as counsel can be heard, at the court-
room of the above entitled Court, at the Post Office
Building, San Francisco, California, move the
Court to vacate and set aside the order staying
deportation heretofore made and entered by the
Court on the 26th day of August, 1932, in the above
entitled cause, on the following ground:

That the petitioner has failed to file an appeal
to the Circuit Court of Appeals in said cause since
the said order staying deportation was made and
entered, or at any time, or at all.

That the said motion will be heard upon this
notice, upon the annexed motion, and upon all the
records and papers of the above entitled Court in
the said cause.

Dated, September 27, 1932.

GEO. J. HATFIELD,
United States Attorney,
Attorney for Respondent. [42]

[Title of Court and Cause.]

MOTION TO VACATE AND SET ASIDE
ORDER STAYING DEPORTATION.

Now comes the respondent John D. Nagle as Commissioner of Immigration at the Port of San Francisco, and moves the Court to vacate and set aside its order staying deportation made and entered in the above entitled cause on the 26th day of August, 1932, and for cause shows:

(1) That the petitioner in the above entitled cause has failed to take an appeal to the Circuit Court of Appeals since the said order staying deportation was made and entered, or at any time, or at all.

Dated: September 27, 1932.

GEO. J. HATFIELD,
United States Attorney,
Attorney for Respondent.

[Endorsed]: Service of the within by copy admitted this 27th day of September, 1932.

WM. M. STAFFORD,
Attorney for

Filed Sep. 27, 1932, 4:14 P. M. Walter B. Mal-
ling, Clerk. [43]



At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 10th day of October, in the year

of our Lord one thousand nine hundred and thirty-two.

Present: The Honorable HAROLD LOUDERBACK, District Judge, et al.

[Title of Cause.]

This matter came on regularly for hearing upon motion to vacate order staying deportation. A. E. Bagshaw, Esq., Assistant United States Attorney, and the attorney for the petitioner, Hoo Gan Tze, failing to answer the calling of the case, and on motion of Mr. Bagshaw, it is ordered that the order staying said deportation be and the same is hereby vacated and set aside. [44]

[Title of Court and Cause.]

ORDER STAYING DEPORTATION.

On application of John L. McNab, attorney for said Hoo Gan Tze, and good cause appearing therefor;

It is hereby ordered that the deportation of said Hoo Gan Tze is hereby stayed for two weeks from and after the date hereof.

Dated, October 14th, 1932.

HAROLD LOUDERBACK,
U. S. District Judge.

[Endorsed]: Filed Oct. 14, 1932, 12:28 P. M.
Walter B. Maling, Clerk. [45]

[Title of Court and Cause.]

ORDER STAYING DEPORTATION.

It is hereby ordered that the deportation of the said Hoo Gan Tze be and the same is hereby stayed for one week from and after the date hereof.

Dated, November 4, 1932.

A. F. ST. SURE,
U. S. District Judge.

[Endorsed]: Filed Nov. 4, 1932, 3:33 P. M.
Walter B. Maling, Clerk. [46]



[Title of Court and Cause.]

PETITION FOR APPEAL.

Now comes Hoo Gan Tze, the detained appellant herein, through his attorneys, and represents:

That on the 17th day of August, 1932, the above entitled Court made and entered its order denying the petition for a writ of habeas corpus as prayed for, on file herein, in which said order certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignments of error filed herewith.

WHEREFORE, this appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals for the Ninth Circuit and that a transcript of the record and proceedings in the above entitled cause, duly authenticated, may be transmitted to the said Circuit Court of Appeals

with the original exhibits; and, further, that the said detained and appellant be held within the jurisdiction of this Court during the pendency of the appeal herein so that he may be produced in execution of whatever judgment may be finally entered herein.

Dated, San Francisco, California, November 12, 1932.

FRANK J. HENNESSY,
MARSHALL B. WOODWORTH,
Attorneys for Appellant.

[Endorsed]: Filed Nov. 17, 1932. Walter B. Maling, Clerk. [47]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Now comes Hoo Gan Tze, the appellant, through his attorneys, and assigns the following errors upon which he will rely on his appeal to the Circuit Court of Appeals for the Ninth Circuit, to-wit:

First. The Court erred in denying the petition for a writ of habeas corpus;

Second. The Court erred in holding that it had no jurisdiction to issue a writ of habeas corpus;

Third. The Court erred in holding that the allegations in the petition for the writ and the facts presented upon the issues made and joined therein were insufficient in law to justify the issuance of the writ of habeas corpus and a hearing thereon;

Fourth. The Court erred in holding that there were serious discrepancies justifying a denial of the petition for the writ of habeas corpus.

WHEREFORE, the appellant prays that the judgment and order of the above entitled Court made and entered herein on 17th day of August, 1932, discharging the order to show cause and denying the petition for the writ of habeas corpus be reversed.

San Francisco, California, November 14, 1932.

FRANK J. HENNESSY,
MARSHALL B. WOODWORTH,
Attorneys for Appellant.

[Endorsed]: Filed Nov. 17, 1932. Walter B. Maling, Clerk. [48]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing that Hoo Gan Tze, the detained and appellant herein, through his attorneys, did on November 16, 1932, file his petition praying for the allowance of an appeal to the Circuit Court of Appeals for the Ninth Circuit, and assignments of error being filed herewith:

On consideration whereof, the Court hereby allows the appeal prayed for and orders execution and remand stayed pending the hearing of said case in said Circuit Court of Appeals for the Ninth

Circuit; and it is further ordered that the respondent and appellee herein retain the said detained within the jurisdiction of this Court and that he be not deported, or removed, from the jurisdiction of this Court, but remain and abide by whatever judgment may be finally entered herein, and that the Clerk of this Court forthwith prepare and transmit to the said Circuit Court of Appeals, a duly authenticated transcript of the record and proceedings in the above entitled matter with the original exhibits and that a cost bond of \$250 be filed on this appeal.

San Francisco, California, November 17th, 1932.

CURTIS D. WILBUR,

U. S. Circuit Judge.

[Endorsed]: Filed Nov. 17, 1932. Walter B. Maling, Clerk. [49]

[Title of Court and Cause.]

**AFFIDAVIT OF SERVICE OF PETITION
FOR APPEAL, ASSIGNMENTS OF
ERROR, ORDER ALLOWING APPEAL
AND CITATION ON APPEAL.**

State of California,
Northern District of California,
City and County of San Francisco.—ss.

Frank J. Hennessy, being first duly sworn, deposes and says:

That he is and was at all the times herein mentioned a person over the age of twenty-one years and not a party to the above entitled proceeding; that on the 17th day of November, 1932, he served the United States Attorney at San Francisco, California, with the petition for appeal, assignments of error, order allowing appeal and citation on appeal filed in said cause on November 17, 1932, by then and there delivering to and leaving with Chellis M. Carpenter, Assistant United States Attorney for the Northern District of California, at San Francisco, California, personally, a copy of said petition for appeal, assignments of error, order allowing appeal and citation on appeal.

FRANK J. HENNESSY.

Subscribed and sworn to before me this 18th day of November, 1932.

[Seal]

MATTIE G. STIRLING,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 18, 1932. Walter B. Maling, Clerk. [50]

BOND FOR COSTS ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we, Hoo Gan Tze as principal, and Firemen's Fund Indemnity Company, as sureties, are held and firmly bound unto United States of America in the full and just sum of Two Hundred Fifty

(\$250.00) Dollars, to be paid to the said United States of America certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this..... day of November in the year of our Lord one thousand, nine hundred and thirty-two.

WHEREAS, lately at a Southern Division District Court of the United States for the Northern District of California in a suit pending in said Court, In the Matter of the application of and in behalf of Hoo Gan Tze for Writ of Habeas Corpus #20938-L, a judgment and order was rendered against the said Hoo Gan Tze and the said Hoo Gan Tze having obtained from said Court order allowing appeal to reverse the said judgment and order in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said Hoo Gan Tze shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THIS recognizance shall be deemed and construed to contain the "Express Agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

Acknowledged before me, by the surety the day and year first above written. [51]

[Seal] FIREMEN'S FUND INDEMNITY
COMPANY,

By L. H. Schwobeda,
Attorney in Fact.

Ernest E. Williams,
U. S. Commissioner,
No. Dist. of Calif.

[Endorsed]: Filed No. 17, 1932, 4:39 P. M.
Walter B. Maling, Clerk. [52]

PRAECIPE.

To the Clerk of said Court:

Sir—Please make certified copy for transcript on appeal of following papers:

- (1) Petition for writ,
- (2) Order to show cause,
- (3) Appearance of respondent,
- (4) Order submitting,
- (5) Order denying petition,
- (6) Order staying deportation,
- (7) Motion to vacate order staying deportation,
- (8) Order granting motion to vacate,

- (9) Order staying deportation (Oct. 14/32),
- (10) Order staying deportation (Nov. 4/32),
- (11) Petition for appeal,
- (12) Order allowing appeal,
- (13) Assignments of error,
- (14) Citation,
- (15) Cost bond.

FRANK J. HENNESSY,
MARSHALL B. WOODWORTH,
Attorneys for Appellant.

[Endorsed]: Filed No. 18, 1932, 10:43 A. M.
Walter B. Maling, Clerk. [53]

[Title of Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 53 pages, numbered from 1 to 53, inclusive, contain a full, true, and correct transcript of the records and proceedings in the Matter of Hoo Gan Tze, on Habeas Corpus, No. 20938-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Twenty Dollars and Thirty Cents (\$20.30) and that the said amount has been

paid to me by the attorneys for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 3rd day of December, A. D. 1932.

[Seal]

WALTER B. MALING,
Clerk.

By C. W. CALBREATH,
Deputy Clerk. [54]

CITATION ON APPEAL.

United States of America.—ss.

The President of the United States of America
To United States of America and John D. Nagle,
as Commissioner of Immigration of the Port
of San Francisco, California, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern Division of the Northern District of California, wherein Hoo Gan Tze is appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be

corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Harold Louderback, United States District Judge for the Northern District of California, this 17th day of November, A. D. 1932.

[Seal]

CURTIS D. WILBUR,
United States Circuit Judge.

[Endorsed]: Filed Nov. 17, 1932, 4:35 P. M.
Walter B. Maling, Clerk. [55]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 7017

HOO GAN TZE,

Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigra-
tion,

Appellee.

STIPULATION AND ORDER OF SUBSTITUTION OF APPELLEE.

It appearing that the appellee, John D. Nagle, Commissioner of Immigration, at San Francisco, California, died on December 30, 1932, during the pendency of said appeal and that said suit and appeal involves questions relating to the discharge of his official duties in denying appellant the right

to enter the United States, it is hereby stipulated and agreed that Edward L. Haff, acting Commissioner of Immigration, be, and he is hereby, substituted as appellee in the above entitled case.

San Francisco, Calif., January 17, 1933.

I. M. PECKHAM,

United States Attorney.

MARSHALL B. WOODWARD,

FRANK J. HENNESSY,

Attorneys for Appellant.

So ordered.

CURTIS D. WILBUR,

United States Circuit Judge.

[Endorsed]: Filed Jan. 19, 1933. Paul P. O'Brien, Clerk.

[Endorsed]: No. 7017. United States Circuit Court of Appeals for the Ninth Circuit. Hoo Gan Tze, Appellant, vs. Edward L. Haff, as Acting Commissioner of Immigration of the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 3, 1932.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

